

CHAPTER 9

RIGHT OF WAY AND CLEARANCES

9.1 General

DDOT has the responsibility for the acquisition of ROW on all Federal and District projects and acquiring all necessary clearances from affected agencies. At times, permanent or temporary easements are necessary to accommodate certain aspects of design and construction. The easements are acquired at the time the property necessary for the project is acquired.

It is important that the proper width of ROW is available for each project prior to construction. It is likewise important that the ROW acquired be sufficient for construction and needs such as clear vehicle recovery areas (clear zone), future widening when warranted by future traffic volumes, and enhancements. All permanent features should be constructed within ROW or permanent easements. Temporary easements must be restored to their original condition after construction or contain only improvements such as driveways or ditches that are used exclusively by the property owner.

The responsibility for the ROW acquisition for all new streets and the widening of existing streets necessary to provide adequate transportation service to, or within a development lies exclusively with the developer.

9.2 ROW Acquisition Procedure

9.2.1 Clearance

Before any Federal-aid project can be advertised for construction, the FHWA requires a letter certifying that all ROW has been acquired and relocation carried out. The District must monitor the acquisition process in sufficient depth to ensure that all applicable District and Federal laws, rules, and regulations are adhered to by the local public agency. After all the necessary documentation has been received, the District ROW Manager will issue a clearance letter under the certification acceptance procedure.

9.2.2 Determination of ROW Needs

Determination of ROW needs begins with the design scoping review and continues through ROW clearance. Some considerations and actions necessary in determining ROW needs include:

- Determining proposed typical section.
- Investigating existing ROW and easements, and adjacent property ownerships.
- Determining the survey activities required (i.e., boundary, topographic, etc).
- Determining the access control requirements and issues for the project.
- Determining any required utility relocations.
- Identifying required ROW.
- Identifying required easements and their purpose.
- Preparation of ROW plans.

9.2.3 ROW Authorization

9.2.3.1 Documentation

The ROW Program requires the following package of materials from the District ROW Manager for authorization. The package shall include:

- Letter requesting authorization functions.
- Three sets of half-scale (11" x 17") prints (two colored).
- Two sets of legal descriptions.
- Two sets of memorandums of ownership with deeds attached.
- Explanation of how unusual ownership conflicts were handled.
- Copy of land service facilities justification letter.

9.2.3.2 Approval

The Chief Engineer is delegated the authority to handle the approval for land acquisition actions and the tendering of payment to land owners for damages in connection with a previously approved highway project. By copy of the same transmittal letter requesting review, the District Right-of- Way Manager will:

- Ensure the following conditions are met before the package is sent to the Chief Engineer for approval:
 - The project is previously approved in the budget - Acquisition is permanent in nature
- Ensure the package contains:
 - Land acquisition approval form
 - ROW cost estimate (Form 438)
 - Copy of Resolution 886-D
 - One set of half-scale plans

9.2.4 Relocation Assistance

On ROW acquisitions with the potential to displace residents, the District ROW Unit will:

- Complete an Acquisition Stage Relocation Plan.
- Meet with property owners and tenants to explain the relocation program.
- Inspect property (discuss issues such as estimate of property and replacement costs with landowners and tenants).
- Assist property owners in obtaining alternate facilities.
- Arrange for moving personal property from any land acquisition or easement.

9.2.5 ROW Changes

If at any time there are changes in the plans that affect the ROW, it is the Project Manager's responsibility to notify the ROW Manager. The Project Manager is responsible for:

- Identifying preliminary survey and ROW needs at the scoping meeting.
- Submitting a survey request to the District Survey Coordinator.
- Furnishing comprehensive design information such as embankment toes, structure limits and road approach design ROW requirements to the ROW Manager as soon as possible after the Field Inspection Review so that new ROW and easement limits can be determined and ROW plans and descriptions prepared.

NOTE: ROW changes are discouraged, as they may adversely affect and delay the ROW clearance, and the overall project schedule.

9.3 Government Lands Permits

Permits or other agreements are required whenever the Department or a Contractor is required to do work outside the ROW or easement area that has been previously obtained from other government entities. The process to acquire permits and permission to work on government lands is as follows:

- The Project Manager, through the District ROW Manager and the ROW Program in Project Development, will apply for the required document from the pertinent agency after considering that agency's concerns and expectations. The agency may issue the permit or easement, turn down the request, or ask that it be revised.

- The above-referenced agencies require their approval, by special use permit, highway easement deed, property grant or other document before any work related to construction can begin, including environmental clearances, utility relocations, surveying or related work.
- The Project Manager is responsible for initiating and coordinating with the District ROW Manager, and the WASA Utility Engineer and/or District Planning/ Environmental Manager, when applicable, to provide the necessary information to obtain the special use permit, highway easement deed, grant or other document.
- The District ROW Manager shall be responsible for securing the ROW clearances and submitting the information to the Program Manager in Project Development to make application for Federal lands, including the plans, appraisals, and ROW acquisition documents.

9.4 NPS/other Federal Lands Acquisitions

For property acquisitions on National Parks Service or other Federal Lands, the Survey Consultant prepares ROW plan sheets depicting the parcels and/or easements to be acquired. The Program Manager uses these maps to prepare the following:

- The application to FHWA that is reviewed and then forwarded to the agency that owns the property.
- The Highway Easement Deed with stipulations that are forwarded for the signatures of the Chief Engineer before being submitted to FHWA for final execution.

The District ROW Manager clears the ROW for construction following the issuance of the letter of consent by the owner/agency. The Survey Consultant shall prepare a set of final plans that are signed and sealed for deposit into the public records with the appropriate District recorder's office.

9.5 Utilities Clearance

CRS 38-5-101, Eminent Domain Act; CRS 43-1-225, Transportation Act, and other District laws and Constitutional provisions give utilities the right to construct their lines within highway ROW, provided they meet DDOT's established criteria. As a result, many utilities are located adjacent to or within the highway ROW.

Prior to advertisement of any construction project, the District's Public Space Administration must issue a Utility Clearance in accordance with 23 CFR Part 635.309(b), Physical Construction Authorization. This clearance certifies that all conflicts with the utility companies involved with the project have been addressed in the Plans, Specifications and Estimate package or satisfactorily resolved.

The utility clearance letter is directed to FHWA on projects with FHWA oversight. On projects where DDOT has oversight, the clearance letter is directed to the Project Manager.

9.6 Railroad Clearance

Railroad/highway projects shall follow similar scoping and review processes as regular highway projects.

An agreement between the railroad and the District is required on all projects that will alter an existing railroad facility or that will encroach on railroad ROW. The Project Manager is responsible for preparing the draft and final contract railroad/highway agreement and coordinating the review by the railroad and other agencies. To ensure an effective railroad clearance process, the Project Manager should:

- Allow adequate lead-time as this process may take up to a year for clearance.
- Plans need to be nearly complete before any contract can be successfully executed.
- Make early communication with the railroad company and recognize that railroads have specific rights.
- Not presume an existing contract will cover new work.

9.6.1 Basic Requirements Necessary for Railroad/Highway Projects

- Develop preliminary and final railroad plans. Coordination between the Project Manager and the Railroad Engineer is necessary in the preparation of preliminary and final plans.
- Prepare documents and specifications to assure compliance with railroad agreement requirements.
- Obtain approvals and appropriate signatures from the railroad company, the District, and other agencies.
- Prepare railroad flagging, coordination and railroad insurance specifications.
- At a minimum, an abbreviated plan set of project plans will be prepared for the project and will include a cost estimate and general plan sheet for the railroad work. Plans for the railroad work may be incorporated into a larger project.

9.6.2 Documentation Generally Required for Railroad/Highway Projects

- Executed Contracts between District/railroad, as applicable.
- Railroad flagging/insurance protection certificate.

- Federal-Aid Program Data.
- Project Special Provisions.
- Estimate and general plan sheet from involved railroad company.
- ROW and utility clearances, as appropriate.
- Notice to Proceed letter.

9.6.3 Procedures that Generally Apply on Railroad/Highway Projects

- The Contractor is responsible for obtaining Public Liability and Property Damage Insurance for itself and for any subcontractors, as stipulated in the railroad agreement. Evidence of the coverage shall be furnished to DDOT and to the railroad.
- The Contractor also shall obtain Railroad's Protective liability and Property Damage Insurance on behalf of the railroad.
- The Design Unit develops railroad encroachment plans, defines construction responsibilities between railroad and highway, and submits plans for authorization and approval by the railroad.
- If the railroad/highway agency agreement will provide for direct reimbursement of any costs to the railroad from Federal-aid highway funds, the Project Manager will coordinate with the budget office to obtain Federal authorization.
- The Project Manager prepares and submits a draft agreement, including a railroad estimate, for approval by the railroad.. After the executed agreement has been approved by the Attorney/Legal Council and the Controller, it is signed by all involved parties.
- The Project Manager prepares and submits an application when required, such as railroad crossings and over/underpasses.

9.7 Airport/Heliport Clearance

Airway/highway flight area clearances must be adequate for the safe movement of air and highway traffic. Related to that, the expenditure of public funds for any related airport and highway improvement must be in the public interest. Airport flight area clearance should be considered when a highway project is within 20,000 ft. of an airport or within 5,000 ft. of a heliport.

The Project Manager will seek to eliminate substandard airway/highway clearances on existing and new highway projects considering such objects as overhead signs, lighting standards, moving vehicles on the highway, over-crossing structures and fencing adjacent to the airport/heliport. Construction operation activities such as crane placement should be considered.

The Project Manager is responsible for notifying the airport/heliport of any conflict that might apply and for coordinating with airport officials in notifying

these concerns and findings to the Federal Aviation Administration (FAA). The Project Manager should file a FAA Form 7460-1 as per FAR Part 77 (77.17) (if the Project Manager requires assistance or has questions regarding the FAR Part 77 or the process of filing a FAA Form 7460-1, he should contact the DDOT Division of Aeronautics).

Documentation shall be from the coordinating airport official to the FAA; all information submitted by them shall be reviewed by the FHWA to determine if clearances provided are sufficient. The FHWA shall advise the FAA of its findings and give its concurrence. When conflicts cannot be resolved, the District FHWA shall refer its recommendations to the Federal Highway Administrator.

The FHWA issues a Finding in the Public Interest based on compliance with flight area clearances that conform to FAA standards. FAA guidelines also apply to military and private airports with the same rules and regulations as apply to public airports/heliports.

The FAA notifies the Project Manager of acceptable mitigating actions. The Form 418a, Federal-Aid Program Data, has a designation for the airport/heliport in the vicinity and when FAA coordination is required.